

**MINUTES**  
**LRC Committee on Mechanics Lien on Real Property**  
**February 23rd - 9:00 a.m.**  
**Room 415, Legislative Office Building**

Chair Stevens called to order a meeting of the LRC Committee on Mechanics Lien on Real Property on Thursday, February 23<sup>rd</sup> at 9:05 a.m. in room 415 of the Legislative Office Building. The following House Sergeants at Arms were present to serve the committee: Doug Harris and Martha Parrish. The following Senate Sergeant at Arms were present to serve the committee: Donna Blake, Leslie Wright and Billy Fritscher. The following members of the committee were present: Chairs Stevens and Brunstetter and Representatives Blackwell, Faison, and Stam and Senators Harrington and Stein. Chair Stevens introduced the two committee clerks, Julie Garrison and Sarah Hardin and introduced Bill Patterson of the Research staff. Chair Stevens gave an over view of the bill and the reasoning for the committee meetings. Chair Stevens asked for the budget to be adopted by the members of the committee and the budget was adopted.

Chair Stevens asked Bill Patterson of the research staff to briefly explain the provisions contained in **Bill Draft 2011-TGz-13, AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA'S MECHANICS LIEN AND PAYMENT BOND LAWS**. Mr. Patterson explained the changes that the bill draft would make to current law as follows:

- Sections 1 and 3 of the draft move definitions from 44A-17 to 44A-7
- Section 2 of the draft standardizes the forms used for the two types of lien waivers and clarifies that a contractor's partial waiver does not wave the contractor's priority position
- Section 4 of the draft amends 44A-18 to clarify that a subcontractor's lien on funds arises immediately upon the furnishing of labor and materials or equipment to job site
- Section 5 of the draft amends 44A-19 to eliminate the requirement of attaching a copy of the notice of the claim of lien on funds to the claim of lien that the subcontractor files
- Sections 6 and 7 amend 44A-20 and 44A-23 to clarify that if a contractor executes a lien waiver, it waives the subcontractor's lien on real property but not the subcontractor's lien on funds
- Section 7 amends 44A- 23 (a) to permit subcontractors to elect to use the contractor's date of last furnishing
- Section 8 amends 44A- 24 to make it an unfair trade practice for a contractor to make a false statement of the amounts due for work or material
- Section 9 amends 44A-27 to require subcontractors on public contracts to serve contractors with a notice of subcontract in order to make a payment bond claim
- Last section of bill makes the effective date July 1, 2013 and applicable to improvements to real property for which permits were required on or after this date or work started on or after this date for projects not requiring permits

Chair Stevens asked Keith Coltrain from Wall Templeton and Haldrup, PA and a part of the Lien and Bond Law Revision Committee of the Construction Law Section of the North Carolina Bar Association to discuss the bill and outline the changes that the NC Bar Association suggests. (See attachments 1-4). The changes that the NC Bar Association suggests are as follows:

- G.S. 44A-7 and G.S. 44A-17:

- No changes would be required with the exception of relocating the definitions set forth in G.S. 44A-17.
- G.S. 44 A-11:
  - Require the claimant to notify the owner and contractor of the Claim of Lien on Real Property. Currently, there is no requirement that a claimant give notice of its Claim of Lien on Real Property. A subcontractor claimant need only give notice of its Claim of Lien on Funds. By deleting the requirement that the NCLOF be attached to the Claim of Lien on Real Property, there would be an opportunity for lower tiered claimants to assert their subrogation rights while allowing the contractor to continue processing payments to the first-tier subcontractors even after the Real Claim of Lien on Real Property had been filed. The notice to the owner and contractor would be achieved through simply mailing the document to the correct address. Proof of receipt would not be required because such proof would create a substantial burden on the claimants.
- G.S. 44A-12:
  - Modify the statutory form to have the claimant affirm they had mailed the Claim of Lien on Real Property to the owner and, if applicable, the contractor.
- G.S. 44A-18:
  - Change the date the lien of funds comes into existence and the effective date.
  - Delete the reference that the NCLOF must be attached to the Section 44A-23 subrogated Claim of Lien on Real Property;
  - Allow the obligor (e.g. the owner or contractor) to use the funds in the ordinary course of business.
- G.S. 44A-19:
  - Delete the reference that the NCLOF must be attached to the Section 44A-23 subrogated Claim of Lien on Real Property. The requirement that it be attached to a Section 44A-20(d) Claim of Lien on Real Property should be maintained as is.
- G.S.44A-23:
  - Delete the requirement that the NCLOF has to be provided as a condition of being able to assert a subrogated Claim of Lien on Real Property.
  - H489 also includes changes pertaining to which party's dates of last furnishing may be used and some clarification comments pertaining to the effect of a contractor's waiver of claims. We still recommend those changes be adopted, but they are not necessary to resolve bankruptcy issue.

Chair Stevens introduced Andy Carmen of Bell, Davis and Pitt Attorneys at law to further explain G.S.44A-22 the priority of lien on funds. Mr. Carmen explained to the committee that the bankruptcy court interpretations of statutes granting subcontractor lien rights necessitate statutory revisions. Mr. Carmen recommends the following changes:

- Modify 44A-18(1)-(4)and (6):
  - Lien on funds created by statute and by working or providing materials
  - Lien on funds perfected by service of notice of claim of lien upon funds
  - Effective date of lien is date of first furnishing
- New 44A-18(7):
  - Until notice of lien upon funds is given, funds may be used in ordinary course of business.

- New 44A-18 (8):
  - Priority of lien on funds is per 44A-22 (not new, but key).
- New 44A-18(7):
  - Not a new principle- moved last sentence from 44A-18(6)

(See attachment 5 for full written testimony). Keith Coltrain returned to the podium after Andy Carmen to explain further the changes the bill draft would make, including an overview of payment bonds in response to committee member questions.

Chair Stevens introduced Susan Lewis of Beam Construction as the next speaker. (See attachment 6 for full written testimony). Mrs. Lewis explained that as a general contractor (Beam Construction) wants to be sure that everyone is paid for the labor and material they supply to a project. But just as it's unfair for the specialty contractors and suppliers not to be paid once, it's unfair for the general contractor to have to pay twice. She explained that the solution was simple. All Beam Construction would like is to be notified that a subcontractor or supplier is providing services to their project. Many general contractors that do work for public owners have lost money by paying a subcontractor for work and then having to pay a supplier or a 2<sup>nd</sup> tier subcontractor again, because the subcontractor the GC paid did not pay his subs and suppliers. At the conclusion of Mrs. Lewis's remarks, she fielded questions from the committee members.

Chair Stevens introduced the final speaker, J. Scott Bengel, CFO of Shelco Inc. Mr. Bengel spoke to the committee regarding the double payments on payment bonds. He explained as General Contractors (Shelco, Inc) they see it as a threefold issue: 1- Harm to the contractor, 2- Harm to the public and the public owner as Susan Lewis explained and 3- Burden or non-burden to the supplier. (See attachment 7 for full written testimony).

Chair Stevens concluded the meeting by alerting the committee members and stakeholders in the audience that the next meeting would be held in two or three weeks. Chair Stevens also mentioned that hidden liens and leasehold interests may be discussed next and added to the list of things to amend in House Bill 489. Sen. Stein mentioned another issue for consideration and that is the releasing of subdivided lots and the bill he worked on in the Senate **SB 486 AN ACT TO REQUIRE THE RELEASE OF A SUBDIVIDED TRACT OF LAND FROM A TAX LIEN UPON PAYMENT OF TAXES DUE ON THAT TRACT** (see attachment 8) as a bill that could possibly be added into HB 489. Chair Stevens asked Keith Coltrain to briefly explain the tenant threshold issue and Mr. Coltrain mentioned in his explanation that Judge Stillman asked the NC Legislature to look into this issue and provide statutes to follow. Rep. Stam passed out an amendment to HB 489 that he drafted in regards to bankruptcy issues (see attachment 9). Rep. Stam briefly discussed the amendment to the bill and wants to discuss further at the next meeting.

There being no further business, the meeting adjourned at 11:30 a.m.

Respectfully Submitted:

---

Representative Sarah Stevens, Acting Chair

---

Senator Pete Brunstetter, Chair

---

Julie Garrison, Committee Assistant

Attachments:

- Attachment 1: Mr. Keith Coltrain's written testimony
- Attachment 2: Existing Lien Rights Chart
- Attachment 3: Existing Notice of Contract Chart
- Attachment 4: Leasehold Liens Chart
- Attachment 5: Mr. Andy Carmen's written testimony
- Attachment 6: Mrs. Susan Lewis's written testimony
- Attachment 7: Mr. Scott Bengel's written testimony
- Attachment 8: Senate Bill 486
- Attachment 9: Rep. Stam's amendment to House Bill 489